

Decision 16-08-009 August 18, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Velocity
The Greatest Phone Company Ever, Inc. for
a Certificate of Public Convenience and
Necessity to provide resold interexchange
telecommunications services within
California pursuant to the provisions of
Public Utilities Code Section 1001.

Application 15-01-007
(Filed January 13, 2015)

**DECISION GRANTING VELOCITY THE GREATEST PHONE COMPANY
EVER, INC. APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICE**

Summary

This decision grants the joint motion of Velocity the Greatest Phone Company Ever, Inc. (Velocity) and the Commission's Safety and Enforcement Division (SED) for Commission adoption of a settlement agreement in this proceeding (Settlement Agreement) and approves the Settlement Agreement without modification. The Settlement Agreement requires Velocity to pay a penalty of \$70,000. This decision also grants Velocity a certificate of public convenience and necessity to provide resold interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background and Procedural History

Velocity the Greatest Phone Company Ever, Inc. (Velocity) is a Delaware corporation, with its principal place of business located in 7130 Spring Meadows West, Holland, Ohio 43528. On January 26, 2007, Velocity filed for and received

authority from the Secretary of State to transact intrastate business in California. On January 13, 2015 Velocity filed an Application for a certificate of public convenience and necessity (CPCN) pursuant to the Pub. Util. Code § 1001 to provide resold interexchange service in California. Velocity proposed to provide all services routed solely over facilities owned by other certified local exchange carriers, and not engage itself in construction or extension of facilities.

At the time of its application, Velocity did not disclose that the Commission had previously granted it authority to operate as an interexchange carrier telephone corporation pursuant to Pub. Util. Code § 1013.¹ On April 19, 2012, Commission Resolution T-17359 revoked Velocity's authority for its failure to comply with: a) the reporting and remittance requirement of California Public Utilities Reimbursement Account Fee in accordance with Pub. Util. Code §§ 401-405; and b) the submission of a performance bond requirement as ordered under Decision (D.) 10-09-017. Notwithstanding its license revocation, records from the Commission's Telecommunications and User Fees Filing System suggested that Velocity was making monthly surcharge payments, indicating its continuous operation in California.

On February 17, 2015 Commission's Safety and Enforcement Division (SED) filed a Protest to the Application. Foremost among the allegations was that Velocity operated in California without authority after the Commission revoked its license and that the Application contained misstatements and omissions of material fact, including Velocity's statement that it never had its operating authority revoked. Other allegations included Velocity's

¹ The Commission, in D.07-05-066, granted Velocity authority to operate as an interexchange carrier on May 21, 2007.

misrepresentations as to having no director or officer previously under a similar position with a company that filed for bankruptcy and other concerns over the fitness of Velocity's principals and financial responsibility.

Velocity's September 15, 2015 response to SED's Protest was accompanied by a Motion requesting permission to late-file its response. Velocity explained that its failure to timely file a response was due to miscommunication and transitions in legal representation. The assigned Administrative Law Judge (Judge) granted this motion on February 17, 2016.² In disputing SED's allegations, Velocity maintained that despite its license revocation on April 19, 2012, Velocity complied with: a) the reporting and remittance requirement of California Public Utilities Reimbursement Account Fee in accordance with Pub. Util. Code §§ 401-405; and b) the reporting and remittance requirement of public purpose programs surcharges in compliance with D.96-10-066, (with the most recent payments received on January 14, 2015). Additionally, Velocity argued that it had not received notice in 2012 of the Commission Resolution that revoked its license and thus, did not misrepresent that it had never had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction. As to SED's concerns related to Velocity's fiscal responsibility, Velocity opined that they were outside the scope of the Commission's requirements for applicants seeking to provide service in California, while Velocity had demonstrated the sufficiency of its financial resources as required.

² Formally filed February 18, 2016.

A Prehearing Conference was held on April 22, 2015, followed by several status conferences between SED and Velocity (Parties). On November 2, 2015, the Judge issued an Email Ruling Directing Applicant to Submit Information, requiring Velocity to provide additional information necessary to determine whether it met the minimum financial requirements to operate as an interexchange carrier in California. Velocity failed to file a response.

The Parties held several settlement meetings, reaching a settlement on November 23, 2015. Thereafter, SED notified the Judge that it had reached a settlement in principle which would formally be filed in January of 2016. The Parties jointly filed for a Joint Motion for Commission Adoption of All-Party Settlement Agreement on January 7, 2016. The Motion and the Settlement Agreement provide that as part of the Settlement, the Parties have jointly stipulated to certain facts regarding the Application (Stipulated Facts), attached as Exhibit 1 to the Settlement Agreement. On the basis of these Stipulated Facts, the Parties maintain that the Settlement Agreement represents a fair resolution of all matters raised in the proceeding. The Motion requests the Commission's adoption of the Settlement Agreement and issuance of a CPCN to Velocity to provide services in California as an interexchange carrier.

On February 17, 2016, the Judge again requested that Velocity provide the information requested by the November 2, 2015 e-mail ruling by February 22, 2016. Velocity again failed to provide a response. On March 4, 2016, the Judge issued a second Ruling Requiring Additional Information, directing Velocity to file the applicable supplemental filing and advising Velocity that failure to file the required information could result in dismissal of the application. On March 11, 2016, Velocity responded by

providing the applicable financial information requested by the ALJ, showing that Velocity met the requirement.

2. Jurisdiction

Public Utilities Code Section 216(a) defines the term “Public utility” to include a “telephone corporation,” which in turn is defined in Public Utilities Code Section 234(a) as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”

Velocity proposes to provide resold interexchange services statewide. Velocity is a telephone corporation and a public utility subject to our jurisdiction.

3. The Settlement Terms

The Settlement Agreement addresses the issues raised by SED’s Protest and is intended to fully resolve all such issues. The five principal components to the Settlement Agreement are as follows:

3.1. Admissions:

- a. Velocity admits that it violated Rule 1.1 of the Commission’s Rules of Practice and Procedure (Rule) by inadvertently failing to disclose on Application (A.) 15-07-001 that Velocity’s California license had been previously revoked.
- b. Velocity admits that it violated Rule 1.1 by inadvertently providing staff inconsistent financial documents and other information requested pursuant to staff data requests.
- c. Velocity admits that it continued to operate after the Commission had revoked its license in violation of Public Utilities Code Section 1001 or Section 1013. Velocity filed the Application to comply with the Commission’s licensing requirements.

3.2. Penalty

Velocity shall pay a penalty of seventy thousand dollars (\$70,000) for the violations listed in paragraph 1(a)-(c), supra. Velocity shall deposit the entire penalty amount into an escrow account ("Escrow Funds") upon execution of this Settlement Agreement. Upon Commission approval of this Agreement and Application 15-01-007 ("Approval Date"), Velocity shall pay the entire penalty amount to the Commission. Velocity shall make this payment within 7 days of the Approval Date, in the form of a check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Velocity shall write on the face of the check or money order "For deposit to the State of California General Fund, per Decision 16-08-009." Velocity shall concurrently send SED a copy of the penalty check. In the event that either this Settlement Agreement or the Application is not approved, the Escrow Funds will immediately be released to Velocity.

3.3. CPA Audits

Within thirty (30) calendar days from the Approval Date, Velocity shall engage an independent certified accounting firm to conduct a full audit of Velocity's 2014 and 2015 financial statements in accordance with the Financial Accounting Standards Board (FASB) and Generally Accepted Accounting Principles (GAAP). Both audits shall be completed within seven (7) months from the Approval Date. Within three (3) calendar days of receipt of the completed audits, Velocity shall provide SED with a copy of each.

3.4. CPA's Compilation

Within thirty (30) calendar days from the Approval Date, Velocity shall engage an independent certified accounting firm to conduct a CPA's compilation

of Velocity's 2012 and 2013 financial statements in accordance with FASB and GAAP. Both compilations shall be completed within seven (7) months from the Approval Date. Within three (3) calendar days of Velocity's receipt of the completed CPA compilations, Velocity shall provide SED with a copy of each.

3.5. Bond

Velocity shall obtain an enhanced performance bond of fifty thousand dollars (\$50,000).

4. Discussion

Rule 12.1(d) of the Commission Rule provides that the Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is consistent with the law, reasonable in light of the whole record, and in the public interest. We find that the Settlement Agreement meets the criteria for approval under Rule 12.1(d) as follows.

4.1. The Settlement Agreement is Reasonable in Light of the Record as a Whole

A proposed settlement is reasonable, *inter alia*, if it saves the Commission significant expenses and use of its resources, when compared to the risk, expense, complexity, and likely duration of further proceedings, while still protecting the public interest.³ The parties' evaluation of the issues leading to settlement is based in large part on facts that were addressed in the Application, Protest, Joint Statement, and through discussions between the parties and their counsel. These sources and the Settlement Agreement itself provide sufficient information to enable the Commission to approve the Settlement Agreement as reasonable and implement its provisions, terms and conditions. The fine in the

³ In re Southern California Gas Co. (199) D.00-09-034, 2000 Cal.PUC LEXIS 694, at 29.

settlement is in the range for fines typically imposed in cases of claimed Rule 1 violations, even those claimed to be inadvertent.⁴

The Settlement Agreement also avoids the expenditure of Commission resources that would otherwise have been necessary if the parties had chosen to litigate this matter. Thus, there is a net public benefit to adopting the Settlement Agreement that makes it reasonable in light of the whole record.

4.2. The Settlement is Consistent Prior Commission Decisions

Pursuant to D.98-12-075, the Commission is expected to refer to previous Commission decisions which have comparable factual circumstances in determining a penalty. Therefore, to accept a recommended settlement amount, we have looked to the following decisions and settlements as applicable precedent:

- In D.02-04-020, the Commission fined VarTec Telecom, Inc. \$80,000 for failing to obtain Commission approval prior to sale a telecommunications company, failing to provide customers notice of that sale, and acquisition and operation of a second telecommunications company without authority.
- In D.03-01-079, the Commission fined Titan Telecommunications \$35,000.00 for a Rule 1.1 violation.
- In D.11-04-009, the Commission fined NobelBiz VoIP Services, Inc. \$12,000.00 for failing to disclose multiple regulatory sanctions that the FCC issued.
- In D.15-06-003, the Commission fined Dial World \$65,000 for operating without authority and failure to pay required surcharges and fees.

⁴ See cases cited, *infra*, at Section 4.2 of this Decision.

Given these penalty ranges, the Commission finds that the penalty in the amount of \$70,000.00 is within the acceptable range of prior precedent.

4.3. The Settlement is Consistent with the Law

In deciding whether the Settlement Agreement is consistent with the law, the Commission must assess whether the Settlement Agreement complies with all applicable statutes and Commission decisions. We find that nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions, and it provides sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties. The Settlement Agreement does not contradict current Commission rules and it does not constitute a precedent regarding any principle or issue in this proceeding.

Velocity acknowledged the requirements of Rule 1.1. and that the CPCN application required Velocity to disclose whether the applicant had a “telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction,” and that Velocity did not disclose that its California license had been revoked. Velocity admitted it continued to operate after the Commission revoked its license. Velocity further acknowledges that its financial showing was insufficient.

The parties have agreed to a penalty amount that sends a strong message to Velocity while at the same time does not cripple the company’s ability to conduct business in California.

4.4. The Settlement is in the Public Interest

The public interest demands that the Commission protect and defend consumers who utilize telecommunications to ensure that users are paying for the services that they’ve authorized and are charged at a fair rate. Thus, a

settlement that ensures on-going compliance with Commission rules, statutes, and other applicable laws should be encouraged.

The Commission finds that the Settlement Agreement satisfies the criteria of Rule 12.1 (d) and D.98-12-075 and should be adopted as it is reasonable and in the public interest. The Settlement Agreement is an all-party settlement as SED and Velocity are the only active parties in this proceeding. The settling parties have had sufficient opportunity to review and discuss the terms of the Settlement Agreement. Accordingly, we adopt the Settlement Agreement

For all the foregoing reasons, we grant the motion of SED and Velocity for approval of the Settlement Agreement and approve the Settlement Agreement without modification

5. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Velocity only seeks authority to provide service on a resold basis and does not intent to constrict any facilities, it can be seen with certainty that granting this application will not have an adverse impact on the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Velocity must file for additional authority, and submit to any necessary CEQA review.

6. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide resold interexchange services must demonstrate that it has a minimum of \$25,000 cash

or cash equivalent to meet the firm's start-up expenses.⁵ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.⁶

Pursuant to the ALJ's Ruling Requiring Additional Information issued on March 4, 2016, Velocity provided supporting documentation sufficient to demonstrate that it possesses a minimum of \$25,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Velocity has provided documentation that it has funds available for any deposits required by local exchange carriers and/or interexchange carriers. Therefore, no additional resources are required at this time to cover deposits.

⁵ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

⁶ The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers (LEC) and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

7. Technical Qualifications

To be granted a CPCN for authority to provide interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁷ Velocity supplied biographical information on its management in Exhibit 6 to its Application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its Application, Velocity verified that no one associated with or employed by Velocity as an affiliate, officer, director, partner, or owner of more than 10% of Velocity was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations, and has not entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

⁷ D. 95-12-056 at Appendix C, Rule 4.A.

The Stipulated Facts, Exhibit 1 to the proposed Settlement Agreement sets forth the following exception that the Parties have stipulated to, in relation to this section:

- a. Although Velocity certified in its January 13, 2015 Application that it had never had a telecommunications license or operating authority revoked in any jurisdiction, it had in fact been revoked by this Commission on April 19, 2012
- b. In support of its 2015 CPCN Application, Velocity submitted the resume of its principal, Greg Kiley, which represented that Mr. Kiley had started, and at the time of Velocity's 2015 Application, operated a company called Kytel International Group (Kytel).
- c. After several rounds of SED discovery, Velocity disclosed that Kytel was insolvent, and Mr. Kiley updated his resume to reflect that Kytel ceased operation in 2007.

As a result of the Settlement Agreement, Velocity has made a reasonable showing that it possesses the managerial and technical expertise in telecommunications or a related business.

8. Tariffs

Velocity requests a waiver to filing of an interexchange tariff describing its services, rates and terms and conditions. Velocity requests to operate on a detariffed basis, because it will not be providing Basic Local, Access or Special Access Services.

In conjunction with Section 13, we find Velocity exempt from the requirement to file tariffs, provided that Velocity agrees to comply with the consumer protection rules identified in D.98-08-031.

9. Map of Service Territory

To be granted a CPCN for authority to provide interexchange service, an applicant must provide a map of the service territories it proposes to serve.⁸ In Exhibit 4 of its Application, Velocity provided a map of the location of its proposed service territory, in compliance with this requirement.

10. Expected Customer Base

Velocity provided its estimated customer base for the first and fifth years of operation as 1,000 and 5,000 respectively in Paragraph 15 of its Application. Therefore, Velocity has complied with this requirement.

11. Request for Treatment as a Non-dominant Carrier

Velocity requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Velocity's request for non-dominant interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.⁹

12. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We

⁸ D.95-12-056 at Appendix C, Rule 4.E.

⁹ While the Commission has granted exemption from §§ 816 – 830 to others, exemption from §§ 851 – 854 has not been granted previously and is not granted here.

have considered the potential safety implications here. We feel satisfied that Velocity will meet the Commission's minimum safety goals and expectations of interexchange carriers because: (1) Velocity has taken steps to meet the financial requirements as set forth in this decision for an interexchange reseller, and (2) Velocity is a public utility that is required pursuant to Pub. Util. Code § 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

13. Conclusion

We conclude that the Application and Settlement Agreement conforms to our rules for authority to provide resold interexchange telecommunication. Accordingly, we approve the Application and grant Velocity a CPCN to provide resold interexchange telecommunications service in California subject to compliance with the terms and conditions set forth in this decision, the Settlement Agreement, and the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Velocity and corresponding obligations. Velocity receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251). In return, Velocity is obligated to comply with all applicable Public Utilities Codes and Commission Rules, General Orders, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Velocity is obligated to pay all Commission prescribed user fees and public

purpose program surcharges as set forth in the Appendix B of this decision, and to adhere to Pub. Util. Code Section 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

14. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Velocity has filed motions for leave to file Exhibit 5 to the Application and the updated financial information provided at the request of the ALJ during this proceeding as confidential materials under seal. Velocity represents that the information is sensitive, and disclosure could place Velocity at an unfair business disadvantage. We have granted similar requests in the past and do so here.

15. Categorization and Need for Hearing

In Resolution ALJ 176-3350, dated January 29, 2015 the Commission preliminarily categorized this Application as ratesetting, and that hearings were not necessary. On February 17, 2015, SED protested the Application. On April 22, 2015, the assigned ALJ held a pre-hearing conference. Parties subsequently resolved all disputed issues. No hearings were held.

16. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

17. Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Katherine Kwan MacDonald is the assigned Judge in this proceeding.

Findings of Fact

1. Notice of the Application appeared on the Daily Calendar on January 16, 2016.
2. Velocity is a Delaware Corporation, authorized by the Secretary of State of California to conduct business in California.
3. Velocity is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
4. On February 17, 2016, SED protested the application, alleging that Velocity had operated in California without authority after its CPCN was revoked on April 19, 2012, for violations of Rule 1.1. by failing to disclose the revocation of authority, and that it had failed to show managerial and financial fitness to be granted a CPCN.
5. The Settlement Agreement filed on January 7, 2016, provided a joint factual statement, admissions by Velocity that the Commission had revoked its license and that it inadvertently violated Rule 1.1. In addition Velocity agreed to pay a penalty of \$70,000 to the State General Fund, to engage an independent certified accounting firm to conduct an audit of Velocity's 2014 and 2015 financial statements, to engage an independent certified accountant to conduct a Certified Public Accountants' compilation of Velocity's 2012 and 2013 financial statements, and obtain an enhanced performance bond of \$50,000.
6. The proposed Settlement Agreement by and between Applicant and SED resolves all issues raised by SED's protest in this proceeding.

7. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

9. Applicant's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

10. With the exception of the disclosures made in Exhibit 1. Stipulated Facts of the proposed Settlement Agreement, no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations, and has not entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

11. Applicant does not intend to provide "basic service" as defined by D.96-10-066, but intends to provide services on a detariffed basis to the extent permitted by D.07-09-019.

12. Applicant provided a map of the location of its proposed service territory.

13. Applicant provided an estimate of its customer base for the first and fifth year of operation.

14. Pursuant to Rule 11.4, Velocity filed motions for leave to file confidential materials under seal, including Exhibit 5 to the application and financial information provided during the application approval process.

Conclusions of Law

1. The Settlement Agreement fully resolves and settles all disputed issues between the parties to this proceeding.

2. The amount of the penalty imposed on Velocity by the Settlement Agreement is permissible under state law.

3. The Settlement Agreement is consistent with applicable law, and should be approved.

4. Velocity The Greatest Phone Company Ever, Inc. should be granted a CPCN to provide resold interexchange telecommunications service in California, subject to the terms and conditions set forth in the attached Settlement Agreement and Ordering Paragraphs.

5. Velocity The Greatest Phone Company Ever, Inc., once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

6. Velocity The Greatest Phone Company Ever, Inc. should be authorized to provide service as detariffed status, exempt from the requirement to file tariffs, provided that it is a non-dominant interexchange carrier, not providing basic service, and agrees to comply with the consumer protection rules identified in D.98-08-031.

7. Velocity The Greatest Phone Company Ever, Inc.'s motion to file under seal its Exhibit 5 to the Application and financial information provided in response to ALJ inquiry should be granted for three years.

8. Velocity The Greatest Phone Company Ever, Inc. should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

O R D E R

IT IS ORDERED that:

1. The joint motion of the Commission's Safety and Enforcement Division for adoption of the proposed Settlement Agreement, attached hereto as Attachment E, is granted.

2. The Settlement Agreement is approved without modification and a Certificate of Public Convenience and Necessity is granted to Velocity the Greatest Phone Company Ever, Inc. to provide resold interexchange service in California, subject to the terms and conditions set forth below.

3. Velocity The Greatest Phone Company Ever, Inc. (Velocity) shall comply with all terms of the settlement agreement. Specifically, Velocity shall, within seven days of the date of Commission approval of the Settlement Agreement and Application 15-01-007, pay the entire penalty amount to the Commission, in the form of a check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Velocity shall write on the face of the check or money order "For deposit to the State of California General Fund, per Decision 16-08-009." Velocity shall concurrently send a copy of the penalty check to the Commission's Safety and Enforcement Division.

4. The Certificate of Public Convenience and Necessity granted in Ordering Paragraph 2 shall not become effective until the \$70,000 penalty payment required by Ordering Paragraph 4 above has been made.

5. In accordance with the Settlement Agreement, Velocity The Greatest Phone Company Ever, Inc. (Velocity) shall engage an independent certified accounting firm to conduct a full audit of Velocity's 2014 and 2015 financial Statements in accordance with the Financial Accounting Standards Board and Generally Accepted Accounting Principles within thirty (30) calendar days from the effective date of this decision. Both audits shall be completed within seven (7) months from the effective date of this decision. Within three (3) calendar days of receipt of the completed audits, Velocity shall provide Safety and Enforcement Division with a copy of each.

6. In accordance with the Settlement Agreement, Velocity The Greatest Phone Company Ever, Inc. (Velocity) shall engage an independent certified accounting firm to conduct a Certified Public Accountant's compilation of Velocity's 2012 and 2013 financial statements in accordance with Financial Accounting Standards Board and Generally Accepted Accounting Principles within thirty (30) calendar days from the effective date of this decision,. Both compilations shall be completed within seven (7) months from the effective date of this decision. Within three (3) calendar days of Velocity's receipt of the completed CPA compilations, Velocity shall provide the Safety and Enforcement Division with a copy of each.

7. Velocity The Greatest Phone Company Ever, Inc. (Velocity) must obtain an enhanced performance bond of at least \$50,000 in accordance with Decision 13-05-035 and the Settlement Agreement. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a

corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Velocity must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

8. Velocity The Greatest Phone Company Ever, Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. The corporate identification number assigned to Velocity The Greatest Phone Company Ever, Inc., U7307C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

10. The certificate granted by this order will expire if not exercised within 12 months of the effective date of this order.

11. In addition to all the requirements applicable to interexchange carriers included in Attachments B, C, and D to this decision, Velocity The Greatest Phone Company Ever, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

12. Velocity The Greatest Phone Company Ever, Inc. (Velocity) must pay the user fee specified in Attachment B. Velocity must pay a minimum user fee of \$100 or 0.23% of gross intrastate revenue, whichever is greater. Under Public Utilities Code Section 405, carriers are in default of reporting and submitting user fees for a period of thirty (30) days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

13. Velocity The Greatest Phone Company Ever, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

14. Prior to initiating service, Velocity The Greatest Phone Company Ever, Inc. must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

15. Prior to initiating service, Velocity The Greatest Phone Company Ever, Inc. must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/General.aspx?id=1089/>. This information must be updated if the name or telephone number changes, or at least annually.

16. Velocity The Greatest Phone Company Ever, Inc. must notify the Director of the Communications Division in writing of the date that interexchange service is first rendered to the public, no later than five days after service first begins.

17. Velocity The Greatest Phone Company Ever, Inc. must file an affiliate transaction report with the Director of the Communications Division, in

compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

18. Velocity The Greatest Phone Company Ever, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

19. Velocity The Greatest Phone Company Ever, Inc. is accorded a detariffed status provided that it remains a non-dominant interexchange carrier, not providing basic service, and agrees to comply with the consumer protection rules identified in Decision 98-08-031.

20. Velocity The Greatest Phone Company Ever, Inc.'s (Velocity) motion to file under seal its Exhibit 5 is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Velocity believes that it is necessary for this information to remain under seal for longer than three years, Velocity may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

21. Application 15-01-007 is closed.

This order is effective today.

Dated August 18, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

ATTACHMENT A
Detariffed Service

Velocity The Greatest Phone Company Ever, Inc. will be providing services on a detariffed basis. No tariffs were filed.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, in this docket with reference to this decision number,¹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. The certificate granted by this order will expire if not exercised within 12 months of the effective date of this order.

3. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust
Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices
Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3;
D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191,
App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88,
App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435. The
minimum annual User Fee is \$100, as set forth in
D.13-05-035.

¹ Written acceptance filed in this docket does not reopen the proceeding.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at

<http://www.cpuc.ca.gov/General.aspx?id=1124>

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/surcharges/>
- To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. Instructions for reporting and filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>

Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #3 above.

6. Applicant must file a service area map as part of its initial tariff.

7. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a

corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

8. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to D.13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints.

10. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/General.aspx?id=1089/>. This information must be updated if the name or telephone number changes, or at least annually.

11. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

12. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

13. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

14. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

15. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

16. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

17. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

18. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

19. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

20. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure.

21. Applicant is exempt from Pub. Util. Code §§ 816-830.

22. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

23. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

24. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.

11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)

ATTACHMENT E
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT BETWEEN
THE SAFETY AND ENFORCEMENT DIVISION AND VELOCITY THE GREATEST
PHONE COMPANY EVER, INC. IN RESOLUTION OF DISPUTED MATTERS
CALIFORNIA PUBLIC UTILITIES COMMISSION
APPLICATION 15-01-007



FILED
1-01-16
04:59 PM

This Settlement Agreement ("Agreement") is hereby entered into by and between the Safety and Enforcement Division ("SED") of the California Public Utilities Commission ("Commission" or "CPUC") and Velocity The Greatest Phone Company Ever, Inc., a Delaware-based corporation ("Velocity") its successor, affiliates, and assigns and sets forth the following terms of the settlement of SED's protest to Velocity's Application for a license to provide resold interexchange telecommunications services ("Application"). All of the above-mentioned parties are sometimes individually referred to as "Party" and/or collectively referred to as "the Parties."

RECITALS

- A. On January 13, 2015, Velocity filed Application 15-01-007 (the "Application") with the Commission.
- B. On February 17, 2015, SED filed a timely protest to Velocity's Application.
- C. SED and Velocity have stipulated to certain facts regarding the Application ("Stipulated Facts"), which Stipulated Facts are attached as Exhibit 1 to this Agreement. On the basis of these Stipulated Facts, and of the terms agreed to by the Parties in this Agreement, the Parties believe that this Agreement represents a fair resolution of all matters raised in proceeding A.15-01-007, including SED's Protest, and it is in the public interest for the Commission to approve this Agreement.

NOW THEREFORE, in consideration of the foregoing and based upon the mutual promises and representations made by the Parties to each other, the Parties hereby agree as follows:

TERMS OF SETTLEMENT

- 1. **Admissions:**
 - a. Velocity admits that it violated Rule 1.1 of the Commission's Rules of Practice and Procedure by inadvertently failing to disclose on the Application that Velocity's license to operate in California had been previously revoked.
 - b. Velocity admits that it violated Rule 1.1 of the Commission's Rules of Practice and Procedure by inadvertently providing staff inconsistent financial documents and other information requested pursuant to staff data requests.

- c. Velocity admits that it continued to operate after the Commission had revoked its license in violation of Public Utilities Code Section 1001 or Section 1013. Velocity filed the Application to comply with the CPUC's licensing requirements.
2. **Penalty:** Velocity shall pay a penalty in the amount of seventy thousand dollars (\$70,000) for the violations listed in paragraph 1(a)-(c), *supra*. Velocity shall deposit the entire penalty amount into an escrow account ("Escrow Funds") upon execution of this Settlement Agreement. Upon Commission approval of this Agreement and the Application ("Approval Date"), Velocity shall pay the entire penalty amount to the Commission. Velocity shall make this payment within 7 days of the Approval Date, in the form of a check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Velocity shall write on the face of the check or money order "For deposit to the State of California General Fund, per Decision [XX-XX-XXX]." Velocity shall concurrently send SED a copy of the penalty check. In the event that either this Settlement Agreement or the Application are not approved, the Escrow Funds will immediately be released to Velocity.
3. **Certified Public Accountant ("CPA") Audits:** Within thirty (30) calendar days from the Approval Date, Velocity shall engage an independent certified accounting firm to conduct a full audit of Velocity's 2014 and 2015 financial statements in accordance with FASB and GAAP. Both audits shall be completed within seven (7) months from the Approval Date. Within three (3) calendar days of receipt of the completed audits, Velocity shall provide SED with a copy of each.
4. **CPA's Compilations:** Within thirty (30) calendar days from the Approval Date, Velocity shall engage an independent certified accounting firm to conduct a CPA's compilation of Velocity's 2012 and 2013 financial statements in accordance with FASB and GAAP. Both compilations shall be completed within seven (7) months from the Approval Date. Within three (3) calendar days of Velocity's receipt of the completed CPA compilations, Velocity shall provide SED with a copy of each compilation.
5. **Bond:** Velocity shall pay an enhanced performance bond in the amount of fifty thousand dollars (\$50,000).

General Terms

6. **Commission Approval of the Agreement.** SED and Velocity agree to cooperate and use their respective best efforts to promptly file a joint Motion for Approval of Settlement at the Commission. After signing this Agreement, the Parties shall actively support prompt approval of the Agreement, including briefing, comments on any proposed decision, appearances, and other means as may be needed to obtain approval of the Commission.
7. **Settlement and Release:** This Agreement represents a full and final resolution of Application 15-07-001 and the matters giving rise thereto. If the Commission does not

approve this Agreement in full, it shall have no force and effect, except to the extent set forth in Paragraph 13 (Severability/Commission Modification of the Agreement).

8. **Jurisdiction:** The Commission has jurisdiction over the Parties and subject matter of this Agreement and authority to enforce this Agreement.
9. **Enforcement of this Agreement.** The Parties and their counsel agree to fully cooperate with each other to accomplish the terms of this Agreement in an expeditious manner. The CPUC shall retain continuing jurisdiction over this matter for the term of the Agreement, including jurisdiction to enforce the terms of this Agreement. In the event of a breach, any Party to this Agreement may move the Commission to enforce this Agreement; however, before filing such motion, the moving Party shall meet and confer with all the Parties in a good faith attempt to resolve the issue without Commission intervention.
10. **Terms of Agreement:** The terms of this Agreement shall have been satisfied when the following occurs: (1) the Commission approves this Agreement and the Application; (2) the CPUC has received from Velocity the \$70,000 penalty payment pursuant to the terms in Paragraph 1; (3) the CPA audits and compilations have been completed and submitted to SED; (4) Velocity has paid the \$50,000 enhanced performance bond.
11. **Final Agreement/Intent of Parties.** This Agreement embodies the entire understanding of the Parties with respect to the matters described herein and supersedes any and all prior oral or written agreements, principles, negotiations, statements or understandings among the Parties. The Agreement may be amended only by a written agreement signed by all the Parties. The Parties have bargained in good faith to achieve this Agreement. Each of the Parties has contributed to the preparation of this Agreement. Accordingly, the Parties agree that no provision of the Agreement shall be construed as against any party because that party or its counsel drafted the provision.
12. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
13. **Severability/Commission Modification of the Agreement.** No individual term of this Agreement is agreed to by any Party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any Party may withdraw from this Agreement if the Commission fails to approve, or modifies, deletes from or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.
14. **Successor and Assigns.** The rights conferred and obligations imposed on any Party by this Agreement shall inure to the benefit of or be binding on that Party's successors in interest or assignees as if such successor or assignee were itself a party hereto.

15. **Authority to Execute Agreement.** The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that each execution is made within the course and scope of their respective agency or employment.

16. **Counterparts.** This Agreement may be executed in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be original and shall together constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Settlement Agreement on the date first set forth opposite their signature.

DATED: 1/7/2016

SAFETY AND ENFORCEMENT DIVISION, CPUC

By: 

JEANETTE LO

Chief, Utility Enforcement Branch

DATED: 1/7/2016

VELOCITY THE GREATEST PHONE COMPANY
EVER, INC

By: 

GREGORY KILEY
President, Velocity

EXHIBIT 1
(Stipulated Facts)

EXHIBIT 1 – STIPULATED FACTS

1. On February 9, 2007, Velocity the Greatest Phone Company Ever, Inc. (“Velocity” or “Applicant”), filed with the California Public Utilities Commission (“Commission”) an Application for a Certificate of Public Convenience and Necessity (“CPCN”) to operate as an Interexchange Carrier Telephone Corporation pursuant to provisions of Public Utilities (PU) Code Section 1013.
2. On May 21, 2007, the Commission issued Decision 07-05-066, which approved Velocity’s CPCN application, and assigned Velocity the following corporate identification number: U-7031-C.
3. On April 19, 2012, the Commission issued Resolution T-17359, revoking Velocity’s operating authority for failing to comply with: a) the reporting and remittance requirement of California Public Utilities Reimbursement Account Fee in accordance with PU Code Sections 401 through 405; and b) the submission of a performance bond requirement as ordered under D.10-09-017.
4. On January 13, 2015, Velocity filed with the Commission, Application 15-01-007 (“Application”) for a CPCN to provide resold interexchange telecommunications services.
5. In its 2015 Application, Velocity’s Chief Operating Officer, William Werner, certified under penalty of perjury that: “Neither Velocity The Greatest Phone Company Ever, Inc. nor any of its affiliates, officers, directors, partners, or owners (directly or indirectly) of more than 10% of Applicant, or anyone acting in a management capacity for Application:...(e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction.”
6. On February 17, 2015, the Commission’s Safety and Enforcement Division (“SED”) protested Velocity’s Application, alleging, inter alia, that the verification referenced paragraph 5, supra, was false.
7. The pleadings, SED’s investigation, and documents furnished to SED by Velocity pursuant to discovery, disclose the following facts that SED contends should have been disclosed in Velocity’s application, or otherwise presented accurately in Velocity’s response to SED discovery:
 - a. Although Velocity certified in its January 13, 2015 Application that it had never had a telecommunications license or operating authority revoked in any jurisdiction, it had in fact been revoked by this Commission on April 19, 2012, by Resolution T-17359. Velocity asserts that it did not disclose the previous Commission revocation of Velocity’s operating authority because Velocity believed the re-filing of the application implied that its operating authority had been previously revoked.
 - b. Velocity has been operating in California, without Commission authority, since its license was revoked on April 19, 2012.
 - c. In support of its CPCN application, Velocity submitted financial statements for fiscal years 2012, and 2013. SED noted a number of issues with these statements in its

protest, and followed-up by requesting additional annual statements for a five-year period (2010 – 2014). SED compared the statements and found that none of the statements matched the same statement type for the same fiscal year. SED identified six instances where at least two statements for the same year reflect incompatible financial figures:

- i. 2012 Balance Sheet (Filed Under Seal with CPCN Application) does not match the 2012 Balance Sheet submitted in response to SED discovery; numbers differ by nearly 1M.
 - ii. 2012 Profit & Loss Statement (Filed Under Seal with CPCN Application) does not match the 2012 Income Statement submitted in response to SED discovery; numbers differ by hundreds of thousands, and while the P&L Statement reflects substantial profit, the Income Statement reflects a net loss.
 - iii. 2013 Balance Sheet (Filed Under Seal with CPCN Application) does not match the 2013 Balance Sheet submitted in response to SED discovery; numbers differ by over 1M.
 - iv. 2013 Income Statement (Filed Under Seal with CPCN Application) does not match the 2013 Income Statement initially submitted in response to SED discovery; numbers differ by hundreds of thousands.
 - v. 2013 Income Statement (Filed Under Seal with CPCN Application) does not match the more detailed 2013 Profit & Loss Statement submitted in response to SED's follow-up discovery; numbers differ by hundreds of thousands.
 - vi. 2013 Income Statement initially submitted in response to SED discovery does not match the more detailed 2013 Profit & Loss Statement submitted in response to SED's follow-up discovery; numbers differ by hundreds of thousands.
- d. In support of its 2015 CPCN application, Velocity submitted the résumé of its principal, Greg Kiley, which represented that Mr. Kiley had started, and at the time of Velocity's 2015 application, operated a company called Kytel International Group ("Kytel").
 - e. After several rounds of SED discovery, Velocity disclosed that Kytel was insolvent, and Mr. Kiley updated his résumé to reflect that Kytel ceased operation in 2007.
8. SED contends Velocity's failure to make some or all of the disclosures set forth in paragraph 12 (a)-(e), *supra*, even if inadvertent as Applicant alleges, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.